

RAY F. COFFEE

IBLA 80-124

Decided May 13, 1980

Appeal from decision of Arizona State Office, Bureau of Land Management, holding the Lone Star mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

2. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Ray F. Coffee, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ray F. Coffee appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 16, 1979, declaring the Lone Star mining claims abandoned and void.

BLM stated that the affidavits of labor performed, quitclaim deed, map, and \$40 check for the claims were returned because the location notices for these claims were not received on or before October 22, 1979, the date for filing claims located before October 21, 1976, as required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a). The decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claims and they shall be void.

In his statement of reasons appellant asserts that he was not informed that he had to have photostatic copies of the location notices made. Appellant said BLM informed him on October 19, 1979, that he didn't have the filing dates for the mine. He called the Cochise County Recorder's office in Bisbee, Arizona, 50 miles from his home, and requested that the documents be sent by the Sheriff's office so that he could receive them that evening and put them in the mail on Saturday, October 20, 1979. He states that the Post Office said that the letter would reach Phoenix on Monday, October 22, 1979.

[1] Section 314(b) FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) the owner of an unpatented mining claim, mill site or tunnel site located on or before Oct. 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or

certificate of location [of the claim or site, a certificate of location [1/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the Arizona State Office by October 22, 1979, in order to be filed timely. John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until November 21, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. Appellant's attempt to mail the documents by October 20, 1979, will not excuse the late filing, even though the Post Office informed him that they would reach Phoenix by Monday, October 22, 1979.

[2] Appellant's assertion that he was not informed of the requirement to submit copies of the location notices is to no avail. The Board has held in previous cases that all persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations. Phyllis Wood, 46 IBLA 309 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

